

(Published in The Wichita Eagle on January 13, 2012) 171101

ORDINANCE NO. 49-179

AN ORDINANCE OF THE CITY OF WICHITA, KANSAS (THE "CITY"), APPROVING CERTAIN PLANNED CONSTRUCTION, APPROVING AND AUTHORIZING THE EXECUTION OF A PROFESSIONAL MANAGEMENT SERVICES AND FITNESS CENTER DEVELOPMENT AGREEMENT BETWEEN THE CITY AND GENESIS HEALTH CLUBS, LLC REGARDING MANAGEMENT OF THE CITY'S ICE CENTER FACILITY AND DEVELOPMENT OF A FITNESS CENTER THEREIN, ALL PURSUANT TO CHARTER ORDINANCE NO. 203, AND AUTHORIZING THE ISSUANCE OF GENERAL OBLIGATION BONDS OF THE CITY TO PAY THE COSTS THEREOF, AND THE ISSUANCE OF TEMPORARY IMPROVEMENT NOTES OF THE CITY FROM TIME TO TIME AS FUNDS ARE NEEDED FOR SUCH PURPOSES.

WHEREAS, in conjunction with this ordinance, the City of Wichita (the "City") has approved Genesis Health Clubs, LLC (the "Developer") to serve as manager of the City's Ice Center and as developer in connection with the construction of a fitness center and related improvements within the said Ice Center, and is now considering allowing construction of such fitness center and related improvements by a contractor to be selected by the Developer, through solicitation of at least three competitive bids, but otherwise without public bid; and,

WHEREAS, the Developer will furnish adequate sureties for the full and faithful completion of the said improvements; and

WHEREAS, Charter Ordinance No. 203 of the City requires that, prior to commencement of construction of the improvements, the Governing Body of the City must conduct a public hearing to consider whether to implement the subsection of Charter Ordinance No. 203 that allows for development agreements, in the context of these specific improvements, and must adopt, by 2/3

vote of its members, an Ordinance approving the construction under the provisions of Charter Ordinance No. 203; and

WHEREAS, the Governing Body of the City, pursuant to the requirements of Charter Ordinance No. 203, has conducted a public hearing on December 20, 2011, to hear and consider public comment on the question of whether to implement the provisions of Charter Ordinance No. 203 to approve the construction of the subject improvements under the provisions of Charter Ordinance No. 203 and the proposed Agreement; and

WHEREAS, under the authority of Charter Ordinance No. 156 and Article 12, Section 5 of the Kansas Constitution, the Governing Body of the City hereby further finds and determines that it is necessary and desirable and in the interest and for the general economic welfare of the City and its inhabitants, that general obligation bonds of the City in an amount not to exceed \$750,000, exclusive of the costs of interest on borrowed money (the "Bonds") be authorized and issued for the purpose of paying costs associated with the construction of the subject improvements, said Bonds to be issued in accordance with the provisions of K.S.A. 10-101 *et seq.*, as amended and supplemented.

NOW, THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS AS FOLLOWS:

Section 1. Authorization of Agreement . The City is hereby authorized to enter into the Professional Management Services and Fitness Center Development Agreement (the "Agreement"), by and between the City and Genesis Health Clubs, LLC, in substantially the form presented by City Staff for consideration prior to the public hearing of December 20, 2011, together with such revisions and modifications as the Governing Body has directed, following the conclusion of such public hearing.

Section 2. Approval of Construction of the Improvements by the Developer. The Governing Body hereby approves the construction of the fitness center and related improvements, as provided for in the Agreement, under the provisions of Charter Ordinance No. 203, and further requires the Developer to provide an appropriate instrument of surety to secure completion of the work in compliance with Charter Ordinance No. 203.

Section 3. Execution of Documents. The Mayor of the City is hereby authorized and directed to execute the Agreement in substantially the form approved by the Governing Body with such additional minor corrections thereto as the Mayor shall approve, which approval shall be evidenced by his execution thereof, and City Staff shall deliver the Agreement for and on behalf of and as the act and deed of the City.

Section 4. Authorization of Bonds. The Governing Body hereby finds and determines that it is necessary and desirable to authorize the issuance of general obligation bonds under the authority of Charter Ordinance No. 156 of the City of Wichita and Article 12, Section 5 of the Kansas Constitution in an amount not to exceed \$750,000, exclusive of the costs of interest on borrowed money, for the purpose of paying costs associated with the construction of the fitness center and related improvements. Such Bonds shall be sold and delivered in accordance with the provisions of K.S.A. 10-101 *et seq.*, as amended and supplemented.

Section 5. Authorization of Temporary Notes. It is hereby further authorized, ordered and directed that in order to temporarily finance the costs of the subject improvements prior to the completion thereof and until issuance of the Bonds as hereinbefore provided, there may be issued temporary improvement notes (the "Notes"), the aggregate amount of which shall not exceed the sum of \$750,000, such Notes to be issued from time to time upon subsequent ordinance of the City which shall provide and set forth the details of the Notes, including the

fixing of the dates, terms, denominations, interest rates and maturity dates thereof. Such Notes shall be issued and provision shall be made therefor as funds are needed and required for the orderly completion of the subject improvements. Any Notes issued under the authority of this Section shall be issued under and will contain a recital that they are issued under the authority of K.S.A. 10-123, as amended and supplemented, Charter Ordinance No. 156 of the City of Wichita and Article 12, Section 5 of the Kansas Constitution, and shall contain all other usual and required recitals and covenants and be in the form required therefor by said K.S.A. 10-123, as amended and supplemented; and said Notes may be issued in combination with any other temporary notes being issued by the City as shall be determined by the Governing Body at the time of such issuance to be in the City's best interests.

Section 6. Further Authority. The City shall, and the officers, agents and employees of the City are hereby authorized and directed to, take such further action as necessary to carry out and give effect to the transactions contemplated by this Ordinance, the Agreement, and such other documents as are contemplated by the Agreement in connection with the construction of the subject improvements.

Section 7. Effective Date. This Ordinance shall take effect and be in full force from and after its adoption by vote of 2/3 of the members of the governing body of the City of Wichita, Kansas, and publication once in the official newspaper of the City.

PASSED by the Governing Body of the City of Wichita, Kansas this 10th day of January, 2012, with no less than 2/3 of the members voting in favor thereof.

CITY OF WICHITA, KANSAS

By _____
Carl Brewer, Mayor

ATTEST:

Karen Sublett, City Clerk

(SEAL)

Approved as to Form:

Gary E. Rebenstorf, City Attorney